

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF DELAWARE

IN THE MATTER OF THE ADOPTION OF)
RULES AND PROCEDURES TO IMPLEMENT)
THE RENEWABLE ENERGY PORTFOLIO)
STANDARDS ACT, 26 DEL. C. §§ 351-)
363, AS APPLIED TO RETAIL)
ELECTRICITY SUPPLIERS (OPENED AUGUST) PSC REGULATION DOCKET NO. 56
23, 2005; REOPENED SEPTEMBER 4,)
2007; AUGUST 5, 2008; SEPTEMBER 22,)
2009; AUGUST 17, 2010; SEPTEMBER 6,)
2011, SEPTEMBER 18, 2012; FEBRUARY)
2, 2017)

ORDER NO. 9197

AND NOW, this 27th day of March, 2018 the Delaware Public Service Commission ("Commission") determines and orders the following:

WHEREAS, on October 2, 2015, in Docket No. 15-1462, the Delaware Division of the Public Advocate ("DPA") filed a Petition requesting that this Commission open a docket to consider whether to amend 26 Del. Admin. C. § 3008-3.2.21 to issue regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared pursuant to 26 Del. C. § 354(i) and (j); and on October 12, 2015, the Caesar Rodney Institute ("CRI") submitted a Petition supporting the DPA's Petition; and

WHEREAS, on October 27, 2015, the Commission Staff ("Staff") and the Delaware Department of Natural Resources and Environmental Conservation ("DNREC") filed a Joint Motion opposing the Petitions of the DPA and CRI and requesting that the Commission deny the Petitions (the "Joint Motion"); and on October 29, 2015, the DPA and CRI filed a joint response ("Joint Response") to the Joint Motion; and

WHEREAS, the Commission also received a letter signed by eight members of the Delaware House of Representatives supporting the Petition, and written comments from Dr. Jeremy Firestone and the Mid-Atlantic Renewable Energy Coalition opposing the Petition; and

WHEREAS, on November 3, 2015, the Commission met at its regularly-scheduled meeting to consider the Petition, the Joint Motion, the Joint Response, and other written comments, and to hear oral argument from the parties. After deliberations, the Commission denied the Petition and closed the docket. This decision was memorialized in Order No. 8807, which explained the Commission's decision as follows:

The language of the REPSA [Renewable Energy Portfolio Standards Act, 26 Del. C. §§ 351-363] is not a model of clarity. We believe that the language could be improved to make the respective responsibilities of the Commission and DNREC clearer, and we question whether the aims of the statute will be accomplished given the dispute about how to interpret the language. We urge the General Assembly to clarify those responsibilities going forward. In the meantime, we interpret Sections 354(i) and (j) to provide DNREC with the primary responsibility for issuing regulations governing when a freeze of the minimum percentages of eligible energy resources and solar photovoltaics may be declared.¹

WHEREAS, on December 7, 2015, the DPA filed a Notice of Appeal of the Commission's decision in Order No. 8807 with the Superior Court of the State of Delaware (the "Court"); and

WHEREAS, after briefing and oral argument by the DPA and the Commission, on December 30, 2016, the Court issued a Memorandum

¹ Order No. 8807, ¶ 19 (Dec. 3, 2015).

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Opinion² reversing the Commission's decision in Order No. 8807 and remanding to the Commission for proceedings consistent with the decision; and

WHEREAS, in compliance with the Court's Memorandum Opinion, on February 2, 2017, the Commission adopted Order No. 9025 in Docket No. 15-1462, which: (1) re-opened Docket No. 15-1462 for the limited purpose of complying with the Memorandum Opinion; (2) reversed Ordering Paragraph No. 21 of Order No. 8807, which denied the Petition of the DPA and CRI; and (3) directed Staff to re-open Regulation Docket 56 for the limited purpose of complying with the Memorandum Opinion, specifically to promulgate regulations to amend 26 *Del. Admin. C.* § 3008-3.2.21 and related regulations as needed to specify the procedures for freezing the minimum cumulative solar photovoltaic and eligible energy resource requirements under 26 *Del. C.* § 354(i) and (j); and

WHEREAS, on February 2, 2017, the Commission adopted Order No. 9024 in this docket, which required the publication of proposed Rules in the March 1, 2017 Delaware Register of Regulations, publication of public notice, and a public comment period through April 24, 2017; and

WHEREAS, at the public hearing at the April 6, 2017 regularly-scheduled Commission meeting, the Commission heard public comments; and

² *Delaware Division of the Public Advocate v. Delaware Public Service Commission*, 2016 WL 7494899 (Del. Super. Ct. Dec. 30, 2016) (the "Memorandum Opinion").

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WHEREAS, before April 24, 2017, 104 written public comments were received, including comments from the DPA, CRI, DNREC, and Mr. Gary Myers, among others; and

WHEREAS, on July 20, 2017, Staff filed its Review and Recommendation of the public comments and recommended that the Commission republish revised regulations; and

WHEREAS, after consideration of these public comments and Staff's recommendation, on July 25, 2017, the Commission adopted Order No. 9090 which republished revised regulations in the September 1, 2017 Delaware Register of Regulations, and opened a comment period through October 2, 2017; and

WHEREAS, before expiration of the October 2, 2017 comment period, 8 written public comments were received, and 24 additional public comments were received after the comment period deadline; and

WHEREAS, on November 17, 2017, notice of the hearing was published in the Delaware State News and The News Journal, which took place on December 7, 2017, to determine whether to finalize the proposed regulations approved in Order No. 9090 or republish the substantively revised regulations in this docket; and

WHEREAS, at the December 7, 2017 hearing, the Commission heard arguments on the contested issues from several of the parties that submitted comments, and directed republishing of the proposed regulations in accordance with the Commission's deliberations; and

WHEREAS, on January 16, 2018, the Commission adopted Order No. 9016, which republished revised regulations in the February 1, 2017

Delaware Register of Regulations, and opened a comment period through Friday, March 14, 2018;³ and

WHEREAS, the following filed public comments: Mr. Gary Myers; the Sierra Club; the DPA; DNREC Secretary Shawn M. Garvin;⁴ DNREC; as well as one hundred, twenty-eight (128) additional public comments; and

WHEREAS, the Commission finds the public comments unpersuasive; and

**NOW, THEREFORE, IT IS HEREBY ORDERED BY THE AFFIRMATIVE
VOTE OF NOT FEWER THAN THREE COMMISSIONERS:**

1. That the proposed regulations attached hereto as **Exhibit "A"** are approved as final. The Commission will issue a further written order at a later date explaining the reasons for this decision.

2. That pursuant to 29 Del. C. §§ 1133 and 10115(a), the Secretary shall transmit to the Registrar of Regulations for publication in the May 2018 Delaware Register of Regulations a copy of this Order and the attached final regulations.

3. That the Commission reserves jurisdiction and authority to enter such further orders as may be deemed necessary or proper.

³ PSC Order 9016, Paragraph 4, provided March 2, 2018 as the deadline for public comments. However, the Public Notice of Proposed Regulations, attached at Exhibit "A" to Order 9016, provided March 14, 2018 as the deadline for public comments. The Commission accepted public comments in accordance with the March 14, 2018 deadline.

⁴ On March 7, 2018, Comm'n Exec. Dir. Robert Howatt's Letter to DNREC Sec'y was filed in this docket.

BY ORDER OF THE COMMISSION:

Chair

Commissioner

Commissioner

Commissioner

Commissioner

ATTEST:

Secretary

EXHIBIT A

Proposed Rules

3008 Rules and Procedures to Implement the Renewable Energy Portfolio Standard (Opened August 23, 2005)

1.0 Definitions

1.1 The following words and terms, when used in this Regulation, should have the following meanings unless the context clearly indicates otherwise:

"Alternative Compliance Payment" or "ACP" means a payment of a certain dollar amount per megawatt hour, which a Retail Electricity Supplier may submit in lieu of supplying the minimum percentage of RECs required under Ssubsection 3.3.5. ~~of this Regulation.~~

"Commission" means the Delaware Public Service Commission.

"Compliance Year" means the calendar year beginning with June 1 and ending with May 31 of the following year, for which a Retail Electricity Supplier must demonstrate that it has met the requirements of this Regulation.

"Customer-Sited Generation" means a Generation Unit that is interconnected on the End-Use Customer's side of the retail electricity meter in such a manner that it displaces all or part of the metered consumption of the End-Use Customer.

"CREC" means a Commission-regulated electric distribution company.

"DNREC" means Delaware Department of Natural Resources and Environmental Control.

"E&C Director" means the Director of the Division of Energy & Climate, as the immediate successor to the State Energy Coordinator, to include any subsequent successor.

"Eligible Energy Resources" means the following energy sources located within the PJM region or imported into the PJM region and tracked through the PJM Market Settlement System:

Solar Photovoltaic Energy Resources means solar photovoltaic or solar thermal energy technologies that employ solar radiation to produce electricity or to displace electricity use;

Electricity derived from wind energy;

Electricity derived from ocean energy including wave or tidal action, currents, or thermal differences;

Geothermal energy technologies that generate electricity with a steam turbine, driven by hot water or steam extracted from geothermal reservoirs in the earth's crust;

Electricity generated by a fuel cell powered by Renewable Fuels;

Electricity generated by the combustion of gas from the anaerobic digestion of organic material;

Electricity generated by a hydroelectric facility that has a maximum design capacity of 30 megawatts or less from all generating units combined that meet appropriate environmental standards as determined by DNREC (see DNREC Regulation's Secretary's Order No. 2006-A-0035);

Electricity generated from the combustion of biomass that has been cultivated and harvested in a sustainable manner as determined by DNREC, and is not combusted to produce energy in a waste to energy facility or in an incinerator (see DNREC Regulation's Secretary's Order No. 2006-A-0035);

Electricity generated by the combustion of methane gas captured from a landfill gas recovery system; provided, however, that:

Increased production of landfill gas from production facilities in operation prior to January 1, 2004 demonstrates a net reduction in total air emissions compared to flaring and leakage;

Increased utilization of landfill gas at electric generating facilities in operation prior to January 1, 2004 (i) is used to offset the consumption of coal, oil, or natural gas at those facilities, (ii) does not result in a reduction in the percentage of landfill gas in the facility's average annual fuel mix when calculated using fuel mix measurements for 12 out of any continuous 15 month period during which the electricity is generated, and (iii) causes no net increase in air emissions from the facility; and

Facilities installed on or after January 1, 2004 meet or exceed 2004 Federal and State air emission standards, or the Federal and State air emission standards in place on the day the facilities are first put into operation, whichever is higher.

"End-Use Customer" means a person or entity in Delaware that purchases electrical energy at retail prices from a Retail Electricity Supplier.

"Freeze" means suspension of the implementation of the annual increase in RPS under 26 Del.C. §§354(a), (b), (i) and (j).

"Green Energy Fund" means the Delaware Green Energy Fund as authorized under 26 Del.C. §1014(a).

"GATS" means the Generation Attribute Tracking System developed by PJM-Environmental Information Services, Inc. (PJM-EIS).

"Generation Attribute" means a non-price characteristic of the electrical energy output of a Generation Unit including, but not limited to, the Unit's fuel type, geographic location, emissions, vintage, and RPS eligibility.

"Generation Unit" means a facility that converts a fuel or an energy resource into electrical energy.

"Industrial Customer" means an End-Use Customer with a North American Industry Classification System (NAICS) Manufacturing Sector Code.

"Municipal Electric Company" means a public corporation created by contract between 2 or more municipalities pursuant to provisions of Title 22, Chapter 13 of the **Delaware Code** and the electric utilities that are municipally owned within the State of Delaware.

"New Renewable Generation Resources" means Eligible Energy Resources first going into commercial operation after December 31, 1997.

"Non-Exempt Customers" means all customers of the Commission-regulated electricity company that have not been certified by the Commission as exempt from the RPS under subsection 2.2.

"Peak Demand" shall have the same meaning as and be determined consistently with how such term or a similar term is defined and determined in the applicable utility's tariff then in effect and approved by the Commission. For customers

with more than one account, the peak demands shall be aggregated for all accounts. The calculation will be applied in the current year based on the Peak Demand, as defined above, in the prior year.

"PJM" or **"PJM Interconnection"** means the regional transmission organization (RTO) that coordinates the movement of wholesale electricity in the PJM region, or its successors at law.

"PJM region" means the area within which the movement of wholesale electricity is coordinated by PJM Interconnection. The PJM region is as described in the Amended and Restated Operating Agreement of PJM.

"Qualified Fuel Cell Provider" means an entity that:

a. By no later than the commencement date of commercial operation of the full nameplate capacity of a fuel cell project, manufactures fuel cells in Delaware that are capable of being powered by renewable fuels, and

b. prior to approval of required tariff provisions, is designated by the Director of the Delaware Economic Development Office and the Secretary of DNREC as an economic development opportunity."

"Qualified Fuel Cell Provider Project" (or **"QFCPP"**) means a fuel cell power generation project located in Delaware owned and/or operated by a Qualified Fuel Cell Provider under a tariff approved by the Commission pursuant to 26 Del.C. §364(d).

"Renewable Energy Credit" or ("REC") means a tradable instrument comprised of all the Generation Attributes equal to 1 megawatt-hour of electricity derived from Eligible Energy Resources and that is used to track and verify compliance with the provisions of this Regulation. A REC does not include emission reduction credits and/or allowances encumbered or used by a Generation Unit for compliance with local, state, or federal operating and/or air quality permits associated with the 1 megawatt-hour of electricity.

"Renewable fuel" means a fuel that is derived from Eligible Energy Resources. This term does not include a fossil fuel or a waste product from a fossil fuel source.

"RPS" or **"Renewable Energy Portfolio Standard"** means the percentage of electricity sales at retail in the State that is to be derived from Eligible Energy Resources.

"Retail Electricity Product" means an electrical energy offering that is distinguished by its Generation Attributes only and that is offered for sale by a Retail Electricity Supplier to End-Use Customers. Multiple electrical energy offerings with the same Generation Attributes may be considered a single Retail Electricity Product.

"Retail Electricity Supplier" means a person or entity that sells electrical energy to End-Use Customers in Delaware, including, but not limited to, non-regulated power producers, electric utility distribution companies supplying standard offer, default service, or any successor service to End-Use Customers. A Retail Electricity Supplier does not include a Municipal Electric Company for the purposes of this Regulation.

"Rural Electric Cooperative" means a non-stock, non-profit, membership corporation organized pursuant to the Federal "Rural Electrification Act of 1936" and operated under the cooperative form of ownership.

"Solar Alternative Compliance Payment" or "SACP" means a payment of a certain dollar amount per megawatt-hour, which a Retail Electricity Supplier or Municipal Electric Supplier may submit in lieu of supplying the Minimum Percentage from Solar Photovoltaic required under Subsection 3.3.4. of this Regulation.

"Sustainable Energy Utility" or ("SEU") is the nonprofit entity according to the provisions of 29 Del.C. §8059 that develops and coordinates programs for energy end-users in Delaware for the purpose of promoting the sustainable use of energy in Delaware.

"Solar Renewable Energy Credit" or "SREC" means a tradable instrument that is equal to 1 megawatt-hour of retail electricity sales in the State that is derived from Solar Photovoltaic Energy Resources and that is used to track and verify compliance with the provisions of this Regulation.

"Total Retail Cost of Electricity" means the total costs paid by Non-Exempt Customers of the Commission-regulated electric company for the supply, transmission, distribution, and delivery of retail electricity, including costs paid to third party suppliers, during a respective Compliance Year.

"Total Retail Sales" means retail sales of electricity within the State of Delaware exclusive of sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

11 DE Reg. 1670 (06/01/08)

13 DE Reg. 952 (01/01/10)

2.0 Purpose and Scope

2.1 The benefits of electricity from renewable energy resources accrue to the public at large, and electric suppliers and consumers share an obligation to develop a minimum level of these resources in the electric supply portfolio of the State. The purpose of this Regulation, in support of 26 **Del.C.**, Subchapter III-A, is to set forth the rules for governing the RPS.

2.2 This Regulation shall apply to all retail electricity sales in the State of Delaware except for retail electricity sales of Municipal Electric Companies and retail electricity sales to any Industrial Customer with a Peak Demand in excess of 1,500 kilowatts.

2.2.1 An Industrial Customer with Peak Demand in excess of 1,500 kilowatts may elect to have its load exempt from this Regulation provided that it meets the definitions found in Section 1.1 and:

2.2.1.1 submits a notice to the Commission's Staff including, but not limited to, Name and Address of Industrial Customer, and NAICS Code, and load for each account;

2.2.1.1.1 the Commission's Staff shall, within thirty (30) days of receipt of the notice, provide to the Industrial Customer an acknowledgement of the status, exempt or non-exempt, of the Industrial Customer; and

2.2.1.2 submits the Commission's Staff acknowledgement referenced in Ssubsection 2.2.1.1.1 of this Regulation to its Retail Electricity Supplier.

2.2.2 For an End-Use Customer with multiple accounts totaling in excess of 1,500 kilowatts within an applicable utility's service territory and served by a single Retail Electricity Supplier, to have its load exempt, the aggregate of its accounts with an NAICS Manufacturing Sector Code must have a Peak Demand of at least 751 kilowatts and it must follow the procedure found in Ssubsection 2.2.1.

2.3 Any Rural Electric Cooperative that has opted-out of Commission regulation by its membership pursuant to 26 **Del.C.** §223 of the **Delaware Code** shall, for all purposes of administering and applying this Regulation, be treated as a Municipal Electric Company during any period of time the Rural Electric Cooperative is exempt from Commission regulation.

2.4 A Rural Electric Cooperative may elect to be exempt from the requirements of this Regulation if it develops and implements a program for its ratepayers that is comparable to the RPS beginning in 2013. A Rural Electric Cooperative electing to be exempt from this Regulation must notify the Commission of such election and shall be subject to the requirements set forth in 26 **Del.C.** §363. A Rural Electric Cooperative not electing to be exempt from this Regulation shall be subject to this Regulation and the applicable provisions of 26 **Del.C.** §363.

11 DE Reg. 1670 (06/01/08)

14 DE Reg. 1241 (05/01/11)

3.0 Administration of RPS

3.1 Certifying and Decertifying Eligible Energy Resources:

3.1.1 The Commission through its Staff will certify Generation Units as Eligible Energy Resources based on the definition of Eligible Energy Resources found in Subsection 1.1 of this Regulation.

3.1.2 Any Generation Unit seeking certification as an Eligible Energy Resource must submit an Application for Certification as an Eligible Energy Resource Under the Delaware Renewable Energy Portfolio Standard (Application) to the Commission. This may include Customer-Sited Generation or a Generation Unit owned or operated by a Municipal Electric Company.

3.1.3 Customer-sited generation is eligible to be considered an Eligible Energy Resource provided the facility is physically located in Delaware.

3.1.4 Commission Staff will review the Application and will notify the applicant of its approval as an Eligible Energy Resource or of any deficiencies in its Application within 30 days of receipt. The applicant will have the opportunity to revise its submission, if appropriate.

3.1.5 If an Eligible Energy Resource, once notified by Commission Staff, fails to provide the required documentation or missing information within 60 days of the date of such notification, the Application will be dismissed and must be resubmitted.

3.1.6 If Commission Staff finds the Generation Unit to be in compliance with this Regulation and other applicable law, Staff will issue a State of Delaware Certification Number.

3.1.7 Upon receipt of the State of Delaware Certification Number, a Generation Unit will be deemed an Eligible Energy Resource.

3.1.8 Upon designation as an Eligible Energy Resource, the Generation Unit's owner shall be entitled to one (1) REC for each mega-watt hour of energy derived from Eligible Energy Resources other than Solar Photovoltaic Energy Resources. Upon designation as an Eligible Energy Resource, the owner of a Generation Unit employing Solar Photovoltaic Energy Resources shall be entitled to one (1) SREC for each mega-watt hour of energy derived from Solar Photovoltaic Energy Resource. SRECs and RECs will be created and supplied by the PJM-EIS GATS, or its successor at law. Eligible Energy Resources are subject to applicable PJM-EIS GATS rules and shall pay applicable PJM-EIS GATS fees.

3.1.8.1 The Commission may establish or participate in another renewable energy tracking system, if the Commission finds that PJM-EIS's GATS is not applicable or not suited to meet the needs or requirements of the RPS.

3.1.9 If a Generation Unit is deemed an Eligible Energy Resource and the Eligible Energy Resource's GATS account continues to be maintained in good standing, the Eligible Energy Resource may achieve a Delaware designation for RECs or SRECs recorded with PJM-EIS's GATS for the calendar year being traded in GATS at the time of the Commission Staff's approval of the Eligible Energy Resource.

3.1.10 An Eligible Energy Resource will remain certified unless substantive changes are made to its operational characteristics. Substantive changes include but are not limited to changes in fuel type, fuel mix and generator type. An Eligible Energy Resource making substantive changes to its operational characteristics shall notify the Commission of such changes at least 30 days prior to the effective date of such changes. At such time, the Generation Unit shall submit a revised Application, which shall be subject to review and re-certification.

3.1.11 An Eligible Energy Resource must provide updates to any changes to information submitted in the Application within 30 days of those changes becoming effective. These changes include but are not limited to changes in ownership of the generating unit, changes in ownership of the RECs or SRECs, changes in system size, or the deactivation of the unit.

3.1.12 RECs or SRECs created by an Eligible Energy Resource shall remain valid for compliance, subject to subsection 3.2.7, subsection 3.3.3 and subsection 3.3.4 of this Regulation, even if that Eligible Energy Resource is subsequently decertified for eligibility.

3.1.13 An Eligible Energy Resource may be decertified for any of the following:

3.1.13.1 Failure to comply with Subsections 3.1.1 through 3.1.11;

3.1.13.2 A material change in circumstances that causes it to become ineligible for certification under Subsection 3.1;

3.1.13.3 Fraud or misrepresentation in the Application or to PJM-EIS GATS;

3.1.13.4 Failure to properly update the Commission on changes to information submitted in the Application; or

3.1.13.5 Good cause as determined by the Commission.

3.2 Compliance with RPS

3.2.1 The Total Retail Sales of each Retail Electricity Product delivered to End-Use Customers by a Retail Electricity Supplier during any given Compliance Year shall include a minimum percentage of electrical energy sales from Eligible Energy Resources and Solar Photovoltaics as shown in Schedule 1.

SCHEDULE 1		
Compliance Year (beginning June 1st)	Cumulative Minimum Percentage from Solar Photovoltaics Energy Resources	Minimum Cumulative Percentage from Eligible Energy Resources
2007		2.0%
2008	0.011%	3.0%
2009	0.014%	4.0%
2010	0.018%	5.0%
2011	0.20%	7.0%
2012	0.40%	8.5%
2013	0.60%	10.0%
2014	0.80%	11.5%
2015	1.0%	13.0%
2016	1.25%	14.5%
2017	1.50%	16.0%

2018	1.75%	17.5%
2019	2.00%	19.0%
2020	2.25%	20.00%
2021	2.50%	21.00%
2022	2.75%	22.00%
2023	3.00%	23.00%
2024	3.25%	24.00%
2025	3.50%	25.00%

Minimum Cumulative Percentage from Eligible Energy Resources includes the Minimum Cumulative Percentage from Solar Photovoltaics

3.2.2 A Retail Electricity Supplier's compliance with Schedule 1 shall be based on accumulating RECs and SRECs equivalent to the current Compliance Year's Cumulative Minimum Percentage of Total Retail Sales of each Retail Electricity Product sold to End-Use Customers subject to Subsection 3.2.7 of these Regulations and, where appropriate, other Commission regulations. Each Retail Electricity Suppliers shall file a report detailing its compliance with its RPS obligations within 120 days following the end of Compliance Year 2011.

3.2.3 Beginning June 1, 2012, every Commission-regulated electric companies ("CREC") shall be responsible for procuring RECs, SRECs, and any other attributes needed to comply with the minimum percentage requirements set forth in 26 **Del.C.** §354 and Section 3.2.1 with respect to all energy delivered to the CREC's End-Use Customers. Such RECs and SRECs shall be filed annually with the Commission within 120 days following the completion of the Compliance Year. In fulfilling the duty imposed upon it by 26 **Del.C.** §354(e), a CREC shall succeed to, and assume, the obligations, entitlements, and responsibilities imposed or allowed to a "retail electricity supplier" under the provisions of 26 **Del.C.** §§354-362, subsections and Sections 3.2, and 3.3, and Sections 4.0 and 5.0 ~~of these regulations~~.

3.2.3.1 The transitional process set forth in these Regulations shall apply to all Retail Electricity Suppliers that entered into retail electric supply contracts prior to March 1, 2012 that include RPS compliance costs for Compliance Year 2012 and thereafter and that extend beyond June 1, 2012 (such retail electric supply contracts shall be referred to as "Transitional Retail Contracts". The transitional process will end when the particular contract expires, or is otherwise terminated, or is modified to transfer the RPS compliance costs to the CREC, whichever occurs first.

3.2.3.1.1 On or before March 1, 2012, each Retail Electricity Supplier shall provide the CREC, the Commission Staff and the DPA with identification of all End-Use Customers supplied through a Transitional Retail Contract and shall further provide such supporting data as may be requested. Such identification shall include, but shall not be limited to, the name of the End-Use Customer and the expiration date of the Transitional Retail Contract. All such information required to be submitted hereunder may be submitted confidentially by the Retail Electric Supplier.

3.2.3.1.2 End-Use Customers who dispute their designation may file a complaint with the Commission according to 26 **DE Admin. Code** §1000.

3.2.3.1.3 Retail Electricity Suppliers shall transfer the RECs and SRECs necessary to meet their RPS compliance obligations for each Transitional Retail Contract for the respective Compliance Year beginning with Compliance Year 2012, to the CREC's GATS account for retirement at no cost to the CREC. The CREC will provide to the respective Retail Electricity Supplier the sales number based on metered data pertaining to the identified Transitional Retail Contracts for determining its RPS obligation with preliminary data on or before June 15th, and final data on or before August 15th. Ninety percent of the Retail Electricity Supplier's expected total RECs/SRECs necessary for compliance with its RPS obligations for each Transitional Retail Contract shall be transferred to the CREC's GATS account on or before August 1st following the end of the Compliance Year, and the remaining RECs and SRECs necessary for compliance with the Retail Electricity Supplier's RPS compliance obligations for each Transitional Retail Contract shall be transferred to the CREC's GATS account on or before September 1st following the end of the Compliance Year. Should either of these deadlines fall on a weekend or legal holiday, the deadline will be the next business day following August 1st and September 1st.

3.2.3.1.4 If a Retail Electricity Supplier fails to transfer to the CREC's GATS account sufficient RECs or SRECs to comply with its RPS obligations for each Transitional Retail Contract, it shall reimburse the CREC for the CREC's weighted average purchase cost of procuring such RECs and /or SRECs necessary to comply with the Retail Electricity Supplier's obligations and/or any associated ACPs or SACP by the CREC. The CREC shall accept the retail supplier's designation of Transitional Retail Contracts in determining the RPS obligation for such supplier.

3.2.3.1.4.1 The CREC shall notify the Retail Electricity Supplier of its deficiency and the amount owed to the CREC by October 1st of each year. The CREC shall provide the Retail Electricity Supplier with all supporting documentation of the costs incurred, if requested by the Retail Electricity Supplier. The Retail Electricity Supplier shall have fifteen (15) business days to reimburse the CREC or to advise the

Commission in writing of any dispute relating to the deficiency. Interest shall accrue for any late payment (after the 15 business days) and shall be payable to the CREC. The interest rate shall be based on Delmarva's short term debt rate in effect on the date when the payment was due from the Retail Electricity Supplier.

3.2.3.1.5 To protect a CREC and its customers from incurring an ACP or SACP due to a Retail Electricity Supplier's failure to transfer the appropriate number of RECs and/or SRECs necessary for compliance with its RPS obligations during the transitional process, a CREC may request the Commission to approve a temporary reduction in its RPS obligation or a reduction in the ACP or SACP price for that Compliance Year.

3.2.3.2 Beginning with sales as of June 1, 2012, the CREC will charge all of its distribution system End-Use Customers for RPS compliance costs through a non-bypassable charge based on the weighted average cost of the RECs and SRECs supplied by the CREC.

3.2.3.2.1 Industrial Customers whose peak demand is in excess of 1500 kilowatts and have been acknowledged by the Commission as having their load exempted from the RPS compliance obligations pursuant to 26 **Del.C.** §353(b), ~~and Sections 1,0, and subsections 2.2.1, and 2.2.2,~~ shall not be charged the RPS compliance cost permitted by Subsection 3.2.3.2.

3.2.3.2.2 For a particular compliance year, the total recovery of the RPS compliance costs by the CREC, shall not be an amount greater than the CREC's actual dollar for dollar costs incurred for that compliance year in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to 26 **Del.C.** §358(d) and Subsection 3.3.5 of this Regulations shall be recoverable only to the extent authorized by 26 **Del.C.** §358(f)(2) and Subsection 4.2 of this Regulation.

3.2.3.2.3 The CREC will credit the distribution portion of the bill of the End-User Customers identified in Subsection 3.2.3.1.1 of these Regulations by the amount equal to the non-bypassable charge for the duration of the Transitional Retail Contract.

3.2.3.3 The CREC and Retail Electricity Suppliers shall place on their websites customer education pertaining to the RPS non-bypassable charge and credit required in Subsections 3.2.3.2 and 3.2.3.2.1. The CREC shall also include information on the RPS non-bypassable charge and credit on its bill message or bill insert.

3.2.3.4 Retail Electricity Suppliers that prior to March 1, 2012, have entered into contracts to purchase or produce RECs and/or SRECs specifically for Delaware RPS compliance may offer to the CREC those RECs and/or SRECs. The price would be determined by separate agreement between the Retail Electricity Supplier and the CREC. In no case shall the CREC be obligated to purchase any RECs/SRECs from the Retail Electricity Supplier.

3.2.4 CRECs may use energy output produced by a Qualified Fuel Cell Provider Project to fulfill their REC and SREC requirements as set forth in 26 **Del.C.** § 353(d).

3.2.5 Energy output must be tracked using PJM-EIS GATS or its successor at law or pursuant to Ssubsection 3.1.8.1 of this Regulation.

3.2.6 The right of Commission-regulated electric companies to use energy output produced by a Qualified Fuel Cell Provider Project to fulfill their REC and SREC requirements shall not expire until actually applied to fulfill such requirements.

3.2.7 No CREC, or Retail Electricity Supplier with existing contractual electric supply obligations can provide more than 1% of each Compliance Year's Total Retail Sales from Eligible Energy Resources operational before December 31, 1997. The remainder of each year's retail sales, up to the required amount as specified in Ssubsection 3.2.1 of this Regulation must come from New Renewable Generation resources. In Compliance Year 2026 and for each Compliance Year thereafter, all Eligible Energy Resources used to meet the cumulative minimum percentage requirements set by the Commission rules shall be New Renewable Generation Resources.

3.2.8 A Retail Electricity Supplier shall not use RECs or SRECs used to satisfy another state's renewable energy portfolio requirements for compliance with Ssubsection 3.2.1 and Schedule 1. A Retail Electricity Supplier may sell or transfer any RECs or SRECs not required to meet this Regulation.

3.2.9 On or after June 1, 2006, Eligible Energy Resources may create and accumulate RECs or SRECs for the purposes of calculating compliance with the RPS.

3.2.10 Eligible Energy Resources that do not settle through the PJM Market settlement system must document their actual output of generation, as recorded by appropriate metering, as frequently as PJM-EIS-GATS shall prescribe.

3.2.11 Aggregate generation from small Eligible Energy Resources totaling 100 kilowatts or less of capacity, may be used to meet the requirements of Ssubsection

3.2.1 and Schedule 1 provided that the generators or their agents shall document the level of generation, as recorded by appropriate metering, as frequently as PJM-EIS-GATS shall prescribe.

3.2.12 A Retail Electricity Supplier or Rural Electric Cooperative shall receive 300% credit toward meeting the Minimum Cumulative Percentage from Eligible Energy Resources of Subsections 3.2.1 and Schedule 1 of the RPS for energy derived from the following sources installed on or before December 31, 2014:

3.2.12.1 Customer-Sited solar photovoltaic physically located in Delaware;
or

3.2.12.2 A fuel cell powered by Renewable Fuels for Retail Electricity Suppliers, and such a fuel cell sited in Delaware for Rural Electric Cooperatives.

3.2.13 A Retail Electricity Supplier or Rural Electric Cooperative shall receive 150% credit toward meeting the RPS for wind energy installations sited in Delaware on or before December 31, 2012.

3.2.14 A CREC shall receive 350% credit toward meeting the RPS for energy derived from off-shore wind energy installations sited off the Delaware coast on or before May 31, 2017.

3.2.14.1 To be entitled to 350% credit, contracts for energy and renewable energy credits from such off-shore wind energy installations must be executed by CREC prior to commencement of construction of such installations.

3.2.14.2 CREC shall be entitled to such multiple credits for the life of contracts for renewable energy credits from off-shore wind installations executed pursuant to subsection 3.2.14.

3.2.15 A Retail Electricity Supplier or a Rural Electric Cooperative shall receive an additional 10% credit toward meeting the RPS for solar or wind energy installations sited in Delaware, provided that a minimum of 50% of the cost of the renewable energy equipment, inclusive of mounting components, relates to Delaware manufactured equipment.

3.2.16 A Retail Electricity Supplier or a Rural Electric Cooperative shall receive an additional 10% credit toward meeting the RPS for solar or wind energy installations sited in Delaware provided that the facility is constructed and/or installed with a workforce that consists of at least 75% Delaware residents and/or the installing company employs in total a minimum of 75% workers who are Delaware residents.

3.2.17 A Retail Electricity Supplier or a Rural Electric Cooperative shall receive credit toward meeting the RPS for electricity derived from the fraction of eligible landfill gas, biomass or biogas combined with other fuels (for a Rural Electric Cooperative the Eligible Energy Resource must be sited in Delaware).

3.2.18 Cumulative minimum percentage requirements of Eligible Energy Resources and Solar Photovoltaic Resources shall be established by Commission rules for Compliance Year 2026 and each subsequent year. In no case shall the minimum percentages established by Commission rules be lower than those required for Compliance Year 2025 in Subsections 3.2.1 and Schedule 1. Each of the rules setting such minimum percentage shall be adopted at least two years prior to the minimum percentage being required.

3.2.19 Beginning in Compliance Year 2010, and in each Compliance Year thereafter, the Commission may review the status of Subsection 3.2.1 and Schedule 1 and report to the legislature on the status of the pace of the scheduled percentage increases toward the goal of 25%. If the Commission concludes at this time that the schedule either needs to be accelerated or decelerated, it may also make recommendations to the General Assembly for legislative changes to the RPS.

3.2.20 Beginning in Compliance Year 2014, and in each Compliance Year thereafter, the Commission may, in the event of circumstances specified in this section and after conducting hearings, accelerate or slow the scheduled percentage increases towards meeting the goal of 25%. The Commission may only slow the increases if the Commission finds that at least 30% of RPS compliance has been met through the ACP or SACP for three (3) consecutive years, despite adequate planning by the CREC and, where applicable, Retail Electricity Suppliers with existing contractual electric supply obligations. The Commission may only accelerate the scheduled percentage increases after finding that the average price for RECs and SRECs eligible for RPS compliance has, for two (2) consecutive years, been below a predetermined market-based price threshold to be established by the Commission. The Commission shall establish the predetermined market-based price threshold in consultation with the Delaware Energy Office. Rules that would alter the percentage targets shall be promulgated at least two years before the percentage change takes effect. In no event shall the Commission reduce the percentage target below any level reached to that point.

~~3.2.21 The minimum percentages from Eligible Energy Resources and Solar Photovoltaic Energy Resources as shown in Section 3.2.1 and Schedule 1 may be frozen for CRECs as authorized by, and pursuant to, 26 Del.C. § 354(i)-(j). For a freeze to occur, the Delaware Energy Office must determine that the cost of complying with the requirements of this Regulation exceeds 1% for Solar Photovoltaic Energy~~

~~Resources and 3% for Eligible Energy Resources of the total retail cost of electricity for Retail Electricity Suppliers during the same Compliance Year. The total cost of compliance shall include the costs associated with any ratepayer funded state renewable energy rebate program, REC and SREC purchases, and ACPs and SACPs alternative compliance payments.~~

~~3.2.21.1 Once frozen, the minimum cumulative requirements shall remain at the percentage for the Compliance Year in which the freeze was instituted.~~

~~3.2.21.2 The freeze may be lifted only upon a finding by the State Energy Coordinator, in consultation with the Commission, that the total cost of compliance can reasonably be expected to be under the 1% or 3% threshold, as applicable.~~

3.2.21 Implementation of Renewable Energy Portfolio Standards Cost Cap Provisions

3.2.21.1 Within 120 days after the end of each Compliance Year, the CREC shall submit to the E&C Director the following information for the applicable Compliance Year:

3.2.21.1.1 The total costs associated with the purchase of SRECs retired to comply with the RPS;

3.2.21.1.2 The total costs associated with all Solar Alternative Compliance Payments as allowed under subsection 4.2;

3.2.21.1.3 The total costs associated with the purchase of RECs retired to comply with the RPS;

3.2.21.1.4 The total costs associated with all Alternative Compliance Payments as allowed under subsection 4.2;

3.2.21.1.5 The Total Retail Cost of Electricity;

3.2.21.1.6 The amount the CREC paid for the QFCPP output that it used to fulfill its REC requirement; and

3.2.21.1.7 The amount the CREC paid for the QFCPP output that it used to fulfill its SREC requirement.

3.2.21.2 Within 120 days after the end of each Compliance Year, the Division of Energy & Climate shall determine the following information for the applicable Compliance Year:

3.2.21.2.1 The total costs associated with any ratepayer funded state solar rebate program; and

3.2.21.2.2 The total costs associated with any ratepayer funded state renewable energy rebate program.

3.2.21.3 The Total Cost of Compliance for Renewable Energy shall be calculated as:

3.2.21.3.1 The total costs associated with any ratepayer funded state solar rebate program, plus

3.2.21.3.2 The total costs associated with the purchase of SRECs retired to comply with the RPS, plus

3.2.21.3.3 The total costs associated with all Solar Alternative Compliance Payments as allowed under subsection 4.2, plus

3.2.21.3.4 The total costs associated with any ratepayer funded state renewable energy rebate program, plus

3.2.21.3.5 The total costs associated with the purchase of RECs retired to comply with the RPS, plus

3.2.21.3.6 The total costs associated with all Alternative Compliance Payments as allowed under subsection 4.2, plus

3.2.21.3.7 The amount the CREC paid for the QFCPP output that it used to fulfill its REC requirement, plus

3.2.21.3.8 The amount the CREC paid for the QFCPP output that it used to fulfill its SREC requirement.

3.2.21.4 The Total Cost of Compliance for Solar Renewable Energy shall be calculated as:

3.2.21.4.1 The total costs associated with any ratepayer funded state solar rebate program, plus

3.2.21.4.2 The total costs associated with the purchase of SRECs retired to comply with the RPS, plus

3.2.21.4.3 The total costs associated with all Solar Alternative Compliance Payments as allowed under subsection 4.2, plus

3.2.21.4.4 The amount the CREC paid for QFCPP output that it used to fulfill its SREC requirement.

3.2.21.5 Within 135 days after the end of each Compliance Year, the E&C Director or its assigned delegate shall calculate the Total Cost of Compliance for Renewable Energy and the Total Cost of Compliance for Solar Renewable Energy as described in subsections 3.2.21.3 and 3.2.21.4 as a percent of the Total Retail Cost of Electricity for the applicable Compliance Year, and shall submit in writing to the Commission its calculations determining whether:

3.2.21.5.1 The Total Cost of Compliance for Solar Renewable Energy during a Compliance Year exceeds 1% of the Total Retail Cost of Electricity during the same Compliance Year; or

3.2.21.5.2 The Total Cost of Compliance for Renewable Energy during a Compliance Year exceeds 3% of the Total Retail Cost of Electricity during the same Compliance Year.

3.2.21.6 If the E&C Director's calculations determine that either subsection 3.2.21.5.1 or 3.2.21.5.2 is met, then in no fewer than 10 days nor more than 30 days the Commission shall conduct at a regularly-scheduled meeting a consultation between the E&C Director and the Commission as to whether a Freeze of the yearly increase in the Minimum Cumulative Percentage from Solar Photovoltaics requirement or a Freeze of the yearly increase in the Minimum Cumulative Percentage from Eligible Energy Resources requirement for CRECs should be instituted as set forth in 26 **Del.C.** §§ 354 (a), (b), (i), and (j).

3.2.21.6.1 Within 20 days after the consultation, the E&C Director or its assigned delegate shall submit to the Commission its written determination, including the bases for that determination, to declare or not declare a Freeze.

3.2.21.6.2 At the next regularly-scheduled Commission meeting the Commission shall consider the determination and issue an Order to the CREC as to whether to institute a Freeze.

3.2.21.7 In the event of a Freeze of the yearly increase in the Minimum Cumulative Percentage from Solar Photovoltaics for CRECs, if the E&C Director makes a finding that, consistent with the calculation set forth in subsection 3.2.21.5, the Total Cost of Compliance for Solar Renewable Energy can reasonably be expected to be less than 1% of the Total Retail Cost of Electricity during the next Compliance Year, the E&C Director shall provide written notification of its finding to the Commission.

3.2.21.8 In the event of a Freeze of the yearly increase in the Minimum Cumulative Percentage from Eligible Energy Resources for CRECs, if the E&C Director makes a finding that, consistent with the calculation set forth in subsection 3.2.21.5, the Total Cost of Compliance for Renewable Energy can reasonably be expected to be less than 3% of the Total Retail Cost of Electricity during the next Compliance Year, the E&C Director shall provide written notification of its finding to the Commission.

3.2.21.9 In no fewer than 10 days nor more than 30 days after receipt of written notification from the E&C Director, the Commission shall conduct at a regularly-scheduled meeting a consultation between the E&C Director and the Commission as to whether a Freeze of the yearly increase in the Minimum Cumulative Percentage from Eligible Energy Resources requirement or a Freeze of the yearly increase in the Minimum Cumulative Percentage from Solar Photovoltaics requirement for CRECs should be lifted as set forth in 26 Del.C. §§ 354 (a), (b), (i), and (j).

3.2.21.9.1 Within 20 days after the consultation, the E&C Director or its assigned delegate shall submit to the Commission its written determination, including the bases for that determination, of whether the total cost of compliance can reasonably be expected to be under the thresholds set forth in subsections 3.2.21.7 or 3.2.21.8.

3.2.21.9.2 If the E&C Director determines that the total cost of compliance can reasonably be expected to be under the thresholds set forth in 3.2.21.9.1, the Commission shall consider the determination and issue an Order to the CREC as to whether to resume increasing the Minimum Cumulative Percentage from Eligible Energy Resources or the Minimum Cumulative Percentage from Solar Photovoltaic Resources requirement beginning in the Compliance Year for which the calculations of subsections 3.2.21.7 or 3.2.21.8 were performed. When a CREC is ordered to resume the increase of the Minimum Cumulative Percentage, the requirement shall be that of the Compliance Year immediately following the percentage required when the Freeze was instituted.

3.2.22 The Renewable Energy Taskforce shall be formed for the purpose of making recommendations about the establishment of trading mechanisms and other

structures to support the growth of renewable energy markets in Delaware according to 26 **Del.C.** §360(d).

3.3 Verification of Compliance with the RPS

3.3.1 Within 120 days of the end of the Compliance Year 2011, each Retail Electricity Supplier who has made sales to an End-use Customer in the State of Delaware must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for that Compliance Year according to Schedule 1 and the Total Retail Sales of each Retail Electricity Product. Beginning with the Compliance Year 2012, the CREC must submit a completed Retail Electricity Supplier's Verification of Compliance with the Delaware Renewable Energy Portfolio Standard Report (Report) which includes, but is not limited to, evidence of the specified number of SRECs and RECs required for the Compliance Year according to Schedule 1 and the Total Retail Sales of each Retail Electricity Product according to Ssubsection 3.2.3.

3.3.2 SRECs or RECs must have been created by PJM-EIS's GATS or its successor at law, or pursuant to Ssubsection 3.1.8.1 of this Regulation.

3.3.3 SRECs or RECs, submitted for compliance with this Regulation may be dated no earlier than three (3) years prior to the beginning of the current Compliance Year.

3.3.4 The three (3) year period referred to in Ssubsection 3.3.3 shall be tolled during any period that a renewable energy credit or solar renewable energy credit is held by the SEU as defined in 29 **Del.C.** §8059.

3.3.5 In lieu of standard means of compliance with the RPS, any Retail Electricity Supplier may pay into the Fund an SACP or ACP pursuant to, and in such amounts as stated in, 26 **Del.C.** §358, or in such other amounts as may be determined by the State Energy Coordinator of the Delaware Energy Office consistent with 26 **Del.C.** §354(i)-(j).

3.3.6 The Commission Staff shall notify any Retail Electricity Supplier of any compliance deficiencies within 165 days of the close of the current Compliance Year. If the Retail Electricity Supplier is found to be deficient by the Commission Staff, the Retail Electricity Supplier shall be required to pay the appropriate ACP or SACP, according to Ssubsection 3.3.5 of this Regulation. All such payments shall be due within 30 days of notification by the Commission Staff. Upon receipt of payment, the Retail Electricity Supplier shall be found to be in compliance for that given year.

3.3.7 All compliance payments, made by a Retail Electricity Supplier, shall be payable to the Delaware Green Energy Fund and sent to the Commission.

11 DE Reg. 1670 (06/01/08)

12 DE Reg. 1110 (02/01/09)

13 DE Reg. 952 (01/01/10)

14 DE Reg. 1241 (05/01/11)

16 DE Reg. 790 (01/01/13)

4.0 Recovery of Costs

4.1 A Retail Electricity Supplier may recover, through a non-bypassable surcharge actual dollar for dollar costs incurred in complying with the State of Delaware's RPS, except that any compliance fee assessed pursuant to Subsection 3.3.5 of these Rules and Regulation shall be recoverable only to the extent authorized by Subsection 4.2 of this Regulation.

4.2 A Retail Electricity Supplier may recover any ACP or SACP if the payment of an ACP or SACP is the least cost measure to ratepayers as compared to the purchase of RECs and SRECs to comply with the RPS; or if there are insufficient RECs and SRECs available for the Retail Electricity Supplier to comply with the RPS.

4.3 Any cost recovered under this section shall be disclosed to customers at least annually on inserts accompanying customer bills.

4.4 Special provisions for customers of CRECs. All costs arising out of contracts entered into by a CREC pursuant to 26 **Del.C.** §1007 (d) shall be distributed among the entire Delaware customer base of such companies through an adjustable non-bypassable charge which shall be established by the Commission. Such costs shall be recovered if incurred as a result of such contracts unless, after Commission review, any such costs are determined by the Commission to have been incurred in bad faith, are the product of waste or out of an abuse of discretion, or in violation of law.

11 DE Reg. 1670 (06/01/08)

12 DE Reg. 1110 (02/01/09)

14 DE Reg. 1241 (05/01/11)

5.0 Miscellaneous

5.1 Under Delaware's Freedom of Information Act, 29 **Del.C.** Ch. 100, all information filed with the Commission is considered of public record unless it contains "trade secrets and commercial or financial information obtained from a person which is of a privileged or confidential nature." 29 **Del.C.** §10002(d)(2). To qualify as a non-public record under this exemption, materials received by the Commission must be clearly and conspicuously marked on the title page and on every page containing the sensitive information as "proprietary" or "confidential" or words of similar effect. The Commission shall presumptively deem all information so designated to be exempt from public record status. However, upon receipt of a request for access to information designated proprietary or confidential, the Commission may review the appropriateness of such designation and may determine to release the information requested. Prior to such release, the Commission shall provide the entity that submitted the information with reasonable notice and an opportunity to show why the information should not be released.

5.2 Any End-Use Customer, Retail Electricity Supplier, Eligible Energy Resource, potential Eligible Energy Resource, Qualified Fuel Cell Provider Project or other interested party to which this Regulation may apply may file a complaint with the Commission pursuant to the Rules of Practice and Procedure of the Delaware Public Service Commission.

5.3 The failure to comply with this Regulation may result in penalties, including monetary assessments, suspension or revocation of eligibility as an Eligible Energy Resource, or other sanction as determined by the Commission consistent with 26 **Del.C.**, §205(a), §217, and §1019.

10 DE Reg. 151 (07/01/06)

11 DE Reg. 1670 (06/01/08)

14 DE Reg. 1241 (05/01/11)

15 DE Reg. 1625 (05/01/12)